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ST 34

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/462,224 01/03/00 JANSSENS

M 702-991961

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436 SEVENTH AVENUE
PITTSBURGH PA 15219-1818

PM82/0918

EXAMINER

JULES F

ART UNIT

PAPER NUMBER

3617

16

DATE MAILED:

09/18/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Applicati n No.

09/462,224

Applicant(s)

JANSSENS, MARCEL HENK
ANDRE

Examin r

Frantz F. Jules

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 8-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the recitation of the first layer of yielding material is separate from the second layer of yielding material, in claim 8, lines 8-9, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 8, 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Hodgson.

Claims 8, 10-12

Hodgson teaches all the limitations of claims 8, 10-12, by showing in fig. 1, a rail track comprising at least two parallel rails (3) supported by a non-compressible base body (6) provided with a channel-like recess with parallel side walls (6) for receiving the rails (3) such that the running surface of the head of the rail (3) lies free, with the bottom of the channel-like recess provided with a first layer of yielding material (7) which extends under the bearing surface of the foot of the rail (3) to fully support the rail (3), and with the side surfaces of the rails (3) covered with a second layer (8) of yielding material,

wherein the first layer of yielding material (7) is separate from the second layer (8) of yielding material. The second layer (8) having a greater stiffness than the first layer (7) as the sizes of the layers are different and with asymmetrical cross-section rail; the elastic material being used as sound-absorbing material, see columns 1-4, lines 1-68.

4. Claims 8-9, 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Ortwein'598.

Claims 8-9, 14

Ortwein'598 teaches all the limitations of claims 8-9, 14, by showing in figs. 1-7, a rail track comprising at least two parallel rails (3) supported by a non-compressible base body (6) provided with a channel-like recess for receiving the rails (3) such that the running surface of the head of the rail lies free, with the bottom of the channel-like recess provided with a first layer of yielding material (9) which extends under the bearing surface of the foot of the rail, and with the side surfaces of the rails (3) covered with a second layer (4) of yielding material, wherein the first layer of yielding material (7) is separate from the second layer (8) of yielding material and the space between the second layer and the channel-like recess is filled with a filler body of non-compressible material (17); the elastic material being used as sound-absorbing material covers the upper side of the base body as shown in fig. 6, see columns 1-4, lines 1-68.

5. Claims 8-9, 13-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Lesley.

Claims 8, 13-14

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Lesley teaches all the limitations of claims 8-9, 13-14 by showing in figs. 1-4 a rail track comprising at least two parallel rails (11) supported by a non-compressible base body (25) provided with a channel-like recess (28) for receiving the rails (11) such that the running surface of the head of the rail lies free, with the bottom of the channel-like recess provided with a first layer of yielding material (18) which extends under the bearing surface of the foot of the rail, and with the side surfaces of the rails (11) covered with a second layer (12) of yielding material, wherein the first layer of yielding material (7) is separate from the second layer (8) of yielding material, see abstract section.

Response to Arguments

6. Applicant's arguments filed 8/28/01 have been fully considered but they are not persuasive.

A. Summary of applicant's argument

In the amendment, applicant traversed the rejection of claims 8-14, currently amended for the following reasons:

1. The newly added claim limitations of wherein the first layer of yielding material is separate from the second layer of yielding material should overcome the previous prior art rejections.

B. Response to applicant's argument

1. Regarding applicant's argument number 1, it should be noted that the newly added claim limitation of the first layer of yielding material is separate from the second layer of yielding material is weak to overcome the rejection of claims 8-14 as all three references of record, Hodson, Ortwein, and Lesley do disclose first layer of yielding

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material that is separate from a second layer of yielding material supporting the rail similar to what applicant display in the drawings. Also, the first and second layers of yielding materials do have different stiffness as the shape or sizes are different. In addition, reference numerical 24 mentioned in the previous rejections has been replaced by the proper reference number.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Dortmunder Union is cited to show related railtrack having first layer of yielding material separated by a second layer of yielding material.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz F. Jules whose telephone number is (703) 308-8780. The examiner can normally be reached on Monday-Thursday and every other Friday from 07:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph S. Morano, can be reached on (703) 308-0230. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

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Frantz Jules
Patent Examiner
Art Unit 3617

FFJ

September 13, 2001

A handwritten signature in black ink, appearing to read 'S. Morano', with a long horizontal stroke extending to the right.

S. JOSEPH MORANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600